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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: RAF 479/2022

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Magistrates: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

In the matter between:

T[...] S[...]

Plaintiff

AND

ROAD ACCIDENT FUND

Defendant

Heard: 27 JANUARY 2025

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **6 MARCH 2025**.

ORDER

The following order is made:

1. The Defendant is ordered to pay to the Plaintiff a capital amount of R5 904 273.00 for his claim for loss of earnings and past medical expenses.
2. Payment will be made directly to the trust account of the Plaintiff's attorneys of record, details as follows:

Holder: Mokoduo Erasmus Davidson Attorneys Trust Account

Bank and Branch: First National Bank (FNB), Rosebank

Account number: 6[...]

Code: 253305

Ref: T735

3. Payment of the capital amount referred to in paragraph 1 above shall be made on or before 180 (one hundred and eighty days) from the date of this court order.
4. Interest at tempore-morae shall be calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17 (3)(a) of the Road Accident Fund Act 56 of 1996, fourteen (14) days.
5. The Defendant will pay the agreed or taxed party and party high court costs of the action on scale B up to 27 January 2025 such costs to include:

5.1 The cost of counsel (scale B);

5.2 The costs attendant upon the obtaining of the capital amount referred to in paragraph 1 above;

5.3 The reasonable cost of the Plaintiff's experts;

5.4 Payment of the agreed or taxed party and party high court costs

will be made directly to the trust account of the Plaintiff's attorneys of record, within 180 (one hundred and eighty days) from the date of the agreed/ date of taxation.

JUDGMENT

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- [1] The plaintiff instituted a claim for damages suffered because of injuries from a motor vehicle accident. The accident occurred on **27 October 2017**. At the time of the accident the plaintiff was a minor and has subsequently reached the age of majority. The defendant was ordered to pay 100% of the proven damages and an amount of R1 000 000.00 ordered for payment of general damages. In addition, the defendant was ordered to give the plaintiff an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996. The only issues remaining for determination, is the loss of earning capacity and past medical expenses.
- [2] The plaintiff sustained a brain injury because of the accident. The defendant did not file any expert reports. This matter proceeded only on the reports filed for the plaintiff. An order in terms of Rule 38(2) of the Uniform Rules of Court was granted and the evidence of the experts was considered on the affidavits. The following reports were considered:
- (a) Dr Makua – General Practitioner
 - (b) Dr Scher – Orthopaedic Surgeon
 - (c) Ms A Mattheus – Educational Psychologist
 - (d) Dr Townsend – Neurologist
 - (e) Ms S Fletcher – Occupational Therapist
 - (f) Mr L Leibowitz – Industrial Psychologist
 - (g) Ms T de Costa – Clinical Psychologist
 - (h) Mr W Loots - Actuary

- [3] As stated above there are no reports by the defendant or any version before court.

Plaintiff's Expert Reports

Neurologist: Dr Townsend

- [4] According to the Neurologist the plaintiff sustained severe primary diffuse traumatic brain injury. Prior to the accident he was well as he had normal birth and developmental history. His injury as a result of the accident has given rise to persistent post-traumatic headaches, neurocognitive deficits and neuropsychological deficits. He is at 10% increased risk of developing late post traumatic epilepsy. The Dr opined that because of the lapse of three years post the accident the plaintiff's deficits would be considered stable and permanent. This means that the natural window for spontaneous recovery has lapsed, and the maximum medical improvement has been reached.

Clinical Psychologist: Ms Da Costa

- [5] It was noted that the plaintiff's severe neuropsychological impairments negatively impact on his cognitive, emotional and behavioural functioning. She further indicated that the behavioural and psychological difficulties of the plaintiff will likely worsen as he becomes older. According to the Clinical Psychologist, the plaintiff will not likely return to pre-accident levels of mental functioning and will continue to encounter difficulties with the schooling context as a result of his deficits. Further that he will struggle to maintain employment in the open labour market.

Educational Psychologist: Ms Mattheus

- [6] The Educational Psychologist opined that the plaintiff presents with severe cognitive difficulties that can be ascribed to the combination of the sequelae of the injuries sustained. She found that it is unlikely that the plaintiff would progress beyond Grades 9 or 10 level in a mainstream school. Her

recommendation is that the plaintiff be placed in a Vocational school to acquire a vocational skill which is NQF level 2.

Industrial Psychologist: Mr L Leibowitz

- [7] According to the Industrial Psychologist, the plaintiff's educational development and employability have been severely compromised as a result of the injuries sustained. He has been rendered vulnerable and uncompetitive and is unlikely to present as an attractive employee in the open labour market. In his opinion Mr Leibowitz found that the plaintiff would likely have difficulty both in obtaining and sustaining meaningful employment and will remain largely unemployed.

Actuary: Mr W Loots

- [8] Based on the expert reports and postulations, the actuarial calculations amount to R6 297 091.00 with 20% contingencies applied pre-morbid. No earnings considered post morbid as the experts opined that the plaintiff is unemployable and has not been employed since the accident occurred.
- [9] In relation to the assessment of damages for loss of earning the following was said in **Southern Insurance Association v Ballie NO 1984 (1) SA 98 (A)**:
“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser

extent. But the Court cannot for this reason adopt a non possumus attitude and make no award...

- [10] The object of the RAF is to give prejudiced plaintiffs the fullest possible compensation by placing them, insofar as possible, in the same position in which they were before the damage-causing event. **See Pretorius v Road Accident Fund 2013 JDR 1096 (GNP).**
- [11] In **Sandler v Wholesale Coal Suppliers Ltd 1941 (A) 194** it was stated that: *“It is no doubt exceedingly difficult to value the damage in terms of money, but that does not relieve the Court of the duty of doing so upon the evidence placed before it. This is a principle which has been acted on in several cases in South African Courts.”*
- [12] The plaintiff in this matter sustained serious injuries because of the accident. As stated only the plaintiff's experts filed reports and opined on the effects of the injuries on the plaintiff after the accident. Prior to the accident the plaintiff had normal growth development and performed well within the schooling environment. Post the accident, there is no doubt that the plaintiff now has challenges and is most likely to be unemployed according to the Industrial Psychologist. It is not disputed that the plaintiff did suffer loss of earning because of the accident and should be compensated.
- [13] In my view there should be contingencies applicable of 25% regard being to the fact that the plaintiff according to the Industrial Psychologist would have proceeded to complete Grade 12 level of education with an endorsement to continue with a Higher Certificate (NQF level 5) if he had the necessary financial support and opportunities. At the time of the accident he was in Grade 5 and had only repeated Grade R. The Industrial Psychologist noted that the plaintiff may not have necessarily proceeded with studies after matriculating and this impacts on the exact time frames of completing tertiary education and entry into the labour market.

[14] The plaintiff is also claiming past medical expenses in the amount of Seven hundred and fifty rand (R750,00). In support of this claim counsel for the plaintiff in his heads of argument referred to case law on past medical expenses. **See: Discovery Health (PTY) Limited v Road Accident Fund and Another (2022/016179) [2022] ZAGPPHC 768 (26 October 2022).**

Order

[15] Consequently, the following order is made:

1. The Defendant is ordered to pay to the Plaintiff a capital amount of R5 904 273.00 for his claim for loss of earnings and past medical expenses.
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5.3 The reasonable cost of the Plaintiff's experts;

5.4 Payment of the agreed or taxed party and party high court costs will be made directly to the trust account of the Plaintiff's attorneys of record, within 180 (one hundred and eighty days) from the date of the agreed/ date of taxation.

J T DJAJE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 27 JANUARY 2025

DATE OF JUDGMENT : 06 MARCH 2025

COUNSEL FOR THE PLAINTIFF : ADV MAREE

COUNSEL FOR THE DEFENDANT : MS MATHEBULA